

**Testimony of Attorney General Thomas F. Reilly
House Committee on Government Reform
April 22, 2005**

Mr. Chairman, Congressman Lynch and other members of the committee, my name is Thomas Reilly and I am Attorney General of the Commonwealth of Massachusetts. Thank you for the opportunity to appear before you today and discuss the role the Attorney General's Office has assumed for cost recovery on the Central Artery/Tunnel Project.

The Central Artery/Third Harbor Tunnel Project represents an enormous investment by the Federal and state governments to improve transportation, not only for the city of Boston but also for the entire region. But it is more than that. The Zakim Bunker Hill Bridge is not simply a way to cross the Charles River. It provides a marvelous gateway to a great city. And soon there will be gardens in the North End that will be a source of community pride, one of many Boston neighborhoods that will be transformed by the addition of parks and new civic spaces. It is my hope and belief that these vast improvements will combine to form the lasting impression of this project.

But we are not there yet. Some very serious problems remain. As with any project, and certainly one of this size and scope, there were errors made in its design and construction. The public should not pay for those errors. The fault for those issues lies with the contractors and consultants the state used to help them get the job done.

Getting from the problems we face now to the promise of a project that reflects well on our state is the primary reason my office assumed responsibility for cost recovery. Before we took over in February 2005 there had been talk of turning over cost recovery to a commission. We did not think that was the way to go. There are only two possible paths to cost recovery -- a negotiated settlement or litigation. Commissions don't negotiate and they don't litigate. So we stepped in and offered to take on cost recovery, which is a role normally performed by the owner or managing agency, not the Attorney General. Our state's Post Audit and Oversight Committee agreed with us that the Commonwealth should speak with one voice and that voice should be the Office of the Attorney General.

By stepping in we also wanted to demonstrate to the Federal government and to U.S. taxpayers that Massachusetts is capable of dealing with these issues. We are capable of doing the job you expect to recover money on behalf of Massachusetts and U.S. taxpayers.

Now, a lot of numbers have been discussed as possible recoveries. We will not speculate. Instead, we will be fact-based in our approach. And we will not suggest an amount to be recovered unless we are sure that we can prove that amount in court.

We face a number of challenges to recovery, including the passage of time, the integrated project organization used by the Massachusetts Highway Department and the Massachusetts Turnpike Authority, and the structure of the project's insurance program and the amounts of insurance available. We will need to address these issues in a methodical way.

We also are looking at issues involving leaks in the I-93 tunnel. Clearly, there has been poor construction. But it would be wrong to focus solely on the contractors. Our focus is squarely on Bechtel which, as the recent FHWA report acknowledges, had responsibility for quality assurance on this project. Bechtel has previously told our state legislators that it will pay its fair share for its failure to detect and have contractors correct problems with the slurry walls. The public should not have to pay for their failures and Bechtel has a professional obligation to correct the problem. How they deal with this issue -- whether they are willing participants in a solution or only reluctantly cooperate -- will tell us a lot about whether we can reach a negotiated settlement with them over other issues.

Second, while much attention appropriately has been focused on slurry wall repair, we have substantial concern that merely grouting the roof leaks will not completely solve the problems there and there may be long-term, added operating and maintenance costs for the state. We know that the tunnel has experienced more leakage in the winter months. We need to understand whether that will happen each winter and, if so, what can and should be done about it. Simply put, there is far more water in this tunnel than was anticipated and if there is a long-term cost associated with that we need to know it and recover it from those responsible for it.

And, certainly, any leakage problems in the tunnel are suspected to be the result of errors and omissions in design, those issues would be appropriate for cost recovery review.

Currently, we are reviewing 134 issues for cost recovery. The major issues are:

- The so-called Integrated Project Control System in the I-93 tunnel that resulted in \$84M contract modification paid to Honeywell. Among the items we are concerned about there are software design, problems with the fire detection/alarm equipment and a two-way radio system that needed to be replaced because it did not function.

- Leak issues in the I-93 tunnel.

- Waterproofing throughout the project. Bechtel was responsible for the concept for the entire project and concerns have been raised about the selection of materials and the design of certain waterproofing details.

- Roadway pavement. There have been some problems with rideability that required resurfacing roadways throughout the project.

- Spectacle Island. A water treatment system on the island currently isn't functioning as intended.

In each and every one of these cases, our goals remain the same: To recover as much money as possible on behalf of state and federal taxpayers and to make sure that, when all is said and done, we got what we paid for.

Thank you.